

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3635 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S. M. SONI.

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

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SARTAJBHAI HASAMBHAI SHAIKH

Versus

GOVERNMENT OF GUJARAT

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Appearance:

MR SB NANAVATI for Petitioner

MR UA TRIVEDI FOR M/S MG DOSHIT & Co. for the respondents.

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CORAM : MR.JUSTICE S.M. SONI

Date of decision: 24/12/96

ORAL JUDGEMENT

Petitioner - Ex-Police Constable by this petition under article 226 of the Constitution of India has challenged illegality and propriety of the order of discharge him from service and retraining the respondents not to effect recovery of pay and allowances earned by him during the period of joining till discharge.

2. The challenge is on the ground that the action of respondents in discharging the petitioner is contrary to the provisions of the law and hit by Article 14 of the Constitution of India in as much as other similarly situated Police Constables are retained in service. The order of recovery is challenged on the ground that the same is either authorised or contemplated under the Bond furnished by the petitioner and/or the agreement entered into by him at the time of joining the service. The same is further challenged on the ground that there is no provision either in the Rules or in the Bombay Civil Services Rules for the recovery which he earned for the period of training.

3. Few facts to appreciate the above contentions are as under :-

The petitioner on being successful in all necessary tests as prescribed under the Gujarat Police Manual Rules, 1975 Vol.- I, (hereinafter referred to as 'the Police Manual Rules' ) was selected and appointed as Police Constable vide order dated 30-9-1982. The petitioner was then sent for eight months training at the Police Training School, Vadodara where he was required to pass every examination that was to be held at the end of every two months. The petitioner took training for six months and passed two examinations of 'D' and 'C' category with good marks. The petitioner thereafter when appeared for third term examination he could not clear the said 'B' category examination. He was given one additional chance, that is in all two chances for the same, and had not clear the same. In view of the provisions of Sub Rule (5) of Rule 129 of the Police Manual Rules the petitioner came to be discharged vide the order dated 24-11-1983 and along with the order of discharge directions for recovery of his pay and allowances earned during training period is also ordered.

3. It is the case of the petitioner that other persons similarly situated were also given one more chance to appear in the examination i.e. third chance. However, the petitioner was denied the same. Thus, the act of the respondents to deny an additional chance to the petitioner is alleged to be arbitrary and discriminatory. The petitioner, therefore, contended that the action of the respondents is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. The petitioner further contended that his request to absorb him as Armed Police Constable also came to be turned down on the ground of medically

unfit. The petitioner contends that when he was given appointment as Unarmed Police Constable he was medically checked up and was found fit. Therefore, refusal to absorb the petitioner as Armed Police Constable is contrary to the initial order of appointment. The petitioner further says that similarly situated persons are absorbed in Armed Constabulary. So, they were marginally different so far as fitness is concerned. The petitioner further contended that demand for salary and allowances paid during the training is arbitrary, unconstitutional, without authority and contrary to the Police Manual Rules. According to the petitioner there is no Rule nor any condition in the Bond or any Agreement which contemplates for refund of salary and allowance earned during the training period if he is removed for not passing the training examinations. According to the petitioner he may be liable to refund salary and allowances if he is removed during the training period on the ground of misconduct or if he does not abide by the agreement to serve for three years of his own. Thus, the action of the respondent is contrary to the Rules and the provisions of the Constitution of India.

4. Allegations made by the petitioner are denied by the affidavit of the District Superintendent of Police (DSP) respondent no. 3. It is alleged that only those recruits who undergo the said training successfully and pass the final terminal examination, are eligible for employment as Unarmed Constables. As per Rule 129 of the Police Manual Rules every recruit is required to undergo training for a period of 8 months split into four class of 2 months each. Every recruit is required to clear examination which may be held at the end of each term of two months. In view of Sub Clause (5) of Rule 129 of the Police Manual Rules that recruit is liable to be discharged if he fails successively twice in any terminal examination. The petitioner having failed successively in Class - B examination i.e. for third terminal examination is discharged from the service by the impugned order dated 24-11-1983.

5. By the said affidavit it is averred by respondent no. 3 is that the recruit is also required to undertake before the competent authority that he shall complete the training successfully and will serve the Government thereafter for at least for a period of three years inclusive of training period. It is also averred that the recruit is required to give an undertaking that failure to satisfy the said condition will make him liable to make good all the expenses incurred for him by the police training school and refund emoluments paid to

such recruit. As the petitioner herein failed to comply with the said conditions the petitioner is bound to repay all the expenses incurred for his training and emoluments paid to him. It is averred in the affidavit that the petitioner was given the show cause notice on 7-11-1983 why he should not be discharged from the training in view of Rule 129 (5) of the Police Manual Rules. It is further averred that there is no provision to grant additional chance to any recruit for passing of the terminal or final examination. It is denied that any of the training given for additional chance was contrary to the provisions of Rule 129 (5) of the Police Manual Rules. It is denied that one Raju Tapiram was given third chance to appear in Class 'C' examination. It is further averred that the Circular to absorb the Unarmed Recruits in Armed Constabulary refers to medical fitness also. As the petitioner did not conform with the physical fitness required he was not absorbed in the Armed Constabulary. In view of these facts and state of affairs the petition is liable to be dismissed and should be dismissed.

6. Sub Rule 5 of Rule 129 of the Police Manual Rules reads as under :-

"An Examination will be held at the end of each term. Two successive failures in any of the terminal examination will result in discharge of the recruit."

7. There is no dispute of the fact that the petitioner has failed in two successive trials for the examination for 'B' Class. Therefore, on this undisputed fact the order of termination on this ground stands in confirmation with the Rule referred to above. The petitioner has alleged that the other recruits were given additional chance and though he asked for additional chance he was not given additional chance. Therefore, refusal to allow the petitioner to have an additional chance is in violative of Article 14 of the Constitution of India. Allegation made by the petitioner is vague as there is no material on record to show that any recruit was given any additional chance contrary to Rule 129 (5) of the Police Manual Rules. In absence of any specific case made out by the petitioner of having given additional chance to any one only allegation does not amount to proof and should not be considered to hold that refusal to allow the petitioner to have additional chance suffers from vice of inequality and breach of Article 14 of the Constitution of India.

8. So far as absorption of the petitioner in Armed Constabulary is concerned, it is not disputed by the petitioner that he was not found medically fit. It appears that there are different norms of medical fitness for the candidates to be appointed as Armed Constabulary and Unarmed Constabulary. It is the case of the respondents that the petitioner was not found medically fit for recruitment in Armed Constabulary. Simply because the petitioner was found medically fit for recruitment for Unarmed Constable by itself does not make him fit for recruitment in Armed Constabulary particularly when there are different standards of medical fitness. Thus, when the petitioner has not disputed that he was not found medically fit there is no question of absorbing the petitioner in Armed Branch. The petitioner has not come out with any specific case of a person who has been recruited despite that person being found medically unfit for Armed Constabulary. There is no substance in this contention also.

9. The petitioner by order of 24th November 1983 was also directed to deposit an amount of Rs.8,943-35 ps. being the amount of allowance, amount of bond and amount of training expenses. This part of the order is challenged by the petitioner alleging that the said demand is neither warranted by any provision of the law nor by any agreement alleged by the Department - respondent.

10. It will be pertinent to refer to an agreement relied on by the respondents. According to the respondents, the said demand is based on the condition of the appointment order as well as agreement entered into by the petitioner with the respondents and also a bond executed by the surety for the petitioner. If one reads all the three documents, it is very clear that if the petitioner resigns voluntarily prior to the completion of the period agreed to serve, he is liable to pay back the amount. It is also agreed that if he is removed for any misconduct, then also he is liable to refund above referred amount. In the instant case, the petitioner came to be discharged from service as he failed twice successively in the third terminal examination. The discharge of the petitioner on this ground in my opinion, does not amount to his resigning voluntarily before the time stipulated in the agreement. This does not amount to his removal for a misconduct. Therefore, in the present case, application of neither agreement nor term of the appointment nor a bond comes in play to entitle the respondents to recover alleged amount. Thus, the demand being in contravention of any of the said

documents and is based on no provision of law or rule, it is liable to be quashed and set aside. Thus, the demand made by the respondent for an amount Rs.8,943-35 ps. is illegal and bad in law.

11. In view of the above observations, the petition is liable to be partly allowed. The order so far as discharge of the petition stands confirmed. Order, so far as it calls upon the petitioner to pay an amount of Rs.8,943-35 ps. is set aside.

12. Rule is made absolutely partly. There shall be, however, no order as to costs.

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